P SANTHIRASEGARAM

v.

THE BOARD OF TRUSTEES OF THE ATHI EESWARAN TEMPLE

COURT OF APPEAL, PUTRAJAYA
GOPAL SRI RAM JCA
AHMAD FAIRUZ JCA
DENIS ONG JCA
[CIVIL APPEAL NO: W-02-687-1996]
4 JUNE 2004

CIVIL PROCEDURE: *Jurisdiction - High Court - Regulation of powers of High Court - Whether only federal laws can mould powers and jurisdiction of court - Whether state enactments have same capacity - Whether state enactment that purports to oust civil jurisdiction of court is valid - Selangor Enactment No. 8 of 1941, s. 12 - Federal Constitution, art. 121(1) - Whether High Court had jurisdiction to hear suit brought by trustees of Hindu temple against defendant*

CONSTITUTIONAL LAW: *Courts - Judicial power - Jurisdiction and powers of High Court - Regulation of - Whether only federal laws can mould powers and jurisdiction of court - Whether state enactments have same capacity - Whether state enactment that purports to oust jurisdiction of court is valid - Selangor Enactment No. 8 of 1941, s. 12 - Federal Constitution, art. 121(1) - Whether High Court had jurisdiction to hear suit brought by trustees of Hindu temple against defendant*

In its pleaded case, the plaintiff, the board of trustees of a Hindu temple, alleged that the defendant was an interloper who had been interfering in the affairs of the temple. The plaintiff then sought and obtained an interlocutory injunction from the High Court to restrain the defendant from entering the plaintiff's office in the temple. Thereafter, the defendant filed an application to strike out the plaintiff's writ on the ground that the High Court had no jurisdiction to entertain the plaintiff's suit. The High Court rejected the application and the defendant appealed to the Court of Appeal. Before the lords justices of appeal, it was canvassed for the defendant that s. 12 of the Selangor Enactment No. 8 of 1941 (under which the trust was constituted) had ousted the jurisdiction of the High Court to entertain or try any suit or proceeding such as the one brought by the plaintiff.

Held (dismissing the defendant's appeal)
Per Gopal Sri Ram JCA delivering the judgment of the court:

[1] Pursuant to art. 121(1) of the Federal Constitution, it is only **federal law** that can regulate the jurisdiction and powers of the courts. State enactments, like the Selangor Enactment No. 8 of 1941, cannot and do not. Consequently, s. 12 of the Selangor Enactment No. 8 of 1941 which purports to remove the jurisdiction of the courts is of **no** effect. (p 628 b)

[Orders of High Court affirmed.]

*[**Bahasa Malaysia** Translation Of Headnotes*

Dalam kes yang diplidnya, plaintif, iaitu lembaga pemegang amanah sebuah kuil Hindu, telah mengatakan bahawa defendan adalah seorang penyibuk yang sering mencampuri urusan dan hal ehwal kuil. Plaintif dengan itu memohon dan memperoleh injunksi interlokutori dari Mahkamah Tinggi bagi menghalang defendan dari memasuki pejabat plaintif di dalam kuil. Berikutnya, defendan memfail permohonan untuk mengetepikan writ plaintif atas alasan bahawa Mahkamah Tinggi tiada bidang kuasa untuk melayani guaman plaintif. Mahkamah Tinggi menolak permohonan dan defendan merayu ke Mahkamah Rayuan. Di hadapan hakim-hakim rayuan, ianya dihujah bagi pihak defendan bahawa s. 12 Enakmen Selangor No. 8 Tahun 1941 (di bawah mana amanah berkaitan ditubuhkan) telah menyingkir bidang kuasa Mahkamah Tinggi untuk melayani atau membicarakan guaman atau prosiding seperti yang dibawa oleh plaintif di sini.

Diputuskan (menolak rayuan defendan)
Oleh Gopal Sri Ram HMR menyampaikan penghakiman mahkamah:

[1] Menurut fasal 121(1) Perlembagaan Persekutuan, hanya undang-undang persekutuan boleh mengawalselia bidang kuasa dan kuasa-kuasa mahkamah. Enakmen-Enakmen Negeri, seperti Enakmen Selangor No. 8 Tahun 1941, tidak boleh berbuat begitu. Oleh yang demikian, s. 12 Enakmen Selangor No. 8 Tahun 1941 yang kelihatan menghapuskan bidang kuasa mahkamah adalah tidak mempunyai apa-apa kesan.

Perintah-perintah Mahkamah Tinggi disahkan.]

Legislation referred to:
Federal Constitution, art. 121(1)
Selangor Enactment No 8 of 1941, ss. 8, 12

For the appellant/defendant - M Pathmanathan; M/s M Pathmanathan & Co
For the respondent/plaintiff - K Anantham; M/s Skrine

[Appeal from High Court, Kuala Lumpur; Suit No: S7-22-726-90]

Reported by Gan Peng Chiang

JUDGMENT

Gopal Sri Ram JCA:

This case concerns a dispute about the affairs of a temple. The plaintiff is the temple's board of trustees. The defendant is alleged in the plaintiff's pleaded case to be an interloper who is interfering in the temple's affairs. There were two sets of interlocutory proceedings before High Court. The first related to an application for an interlocutory injunction to restrain the defendant, *inter alia*, from entering the plaintiff's office located at the temple. Those proceedings terminated in the plaintiff's favour. The second set of proceedings concerned an application by the defendant to strike out the writ on the ground that the court has no jurisdiction to entertain the suit. These too were resolved in the plaintiff's favour. It is against the High Court's refusal to strike out the suit that the present appeal has been brought.

The main argument raised in the court below and repeated before us is that as a matter of written law the High Court is without jurisdiction to entertain this dispute. The written law relied upon by the defendant is Selangor Enactment No. 8 of 1941 which constituted the trust. Section 12 of the said Enactment provides as follows:

> 12 (i) If at any time any matter shall arise for decision or any thing shall require to be done in connection with the Temple or with the powers and duties of the Board and there is no provision regulating the manner in which or by whom such matter should be decided or such thing should be done either in this Enactment or in any rules lawfully made thereunder then until this Enactment or any rules made thereunder is or are amended so as to include such provision the President may decide such matter or do or cause such thing to be done according to his discretion.

(ii) If as between any members of the Board or as between any person claiming to be or to be entitled to become a member of the Board and other members of the Board or as between the Board or any member of it and any person claiming to attend or to be entitled to attend the Temple for religious purposes or otherwise to have an interest in the Temple there shall at any time arise any dispute:

(a) as to the scope or due exercise or performance of any of the powers or duties of the Board, or

(b) as to the proper construction of any provision of this Enactment or of any rules made thereunder,

no Court shall entertain or try or proceed with any suit or other proceeding for the purpose of deciding such dispute but any such dispute shall be referred to the President who shall after such investigation (either by himself or by some other officer nominated by him) and according to such procedure as he may deem to be desirable in order that justice therein be done give in writing his decision on such dispute and **such decision shall thereupon be binding on all parties concerned in such dispute and shall not be called in question in any Court.** (emphasis added.)

It is the defendant's case that the words to which we have added emphasis are contained in a written law and as such the court below had no choice but to strike out the plaintiff's action. The learned judge in the court below mentioned s. 8 of the Enactment but did not address head on the point taken by the defendant. Instead she applied the general principles governing a normal application of this nature and held that the plaintiff's claim was not frivolous or vexatious.

When this appeal was called on for hearing, we drew the attention of appellant's counsel to the provisions of art. 121(1) of the Federal Constitution which reads as follows:

(1) There shall be two High Courts of co-ordinate jurisdiction and status, namely:

(a) one in the States of Malaya, which shall be known as the High Court in Malaya and shall have its principal registry in Kuala Lumpur; and

(b) one in the States of Sabah and Sarawak, which shall be known as the High Court in Sabah and Sarawak and shall have its principal registry at such place in the States of Sabah and Sarawak as the Yang di-Pertuan Agong may determine;

and such inferior courts as may be provided by federal law and the High Courts and inferior courts shall have such jurisdiction and powers as may be conferred by or under **federal law**.

(1A) The courts referred to in Clause (1) shall have no jurisdiction in respect of any matter within the jurisdiction of the Syariah courts. (emphasis added.)

In our judgment, pursuant to art. 121(1) it is only federal law that may regulate the jurisdiction and powers of the courts. State Enactments cannot do so. Accordingly, s. 12 of Selangor Enactment No. 8 of 1941 which purports to oust the jurisdiction of the court is of no effect.

Mr. Pathmanathan frankly conceded that he could not go forward on his appeal in the light of art. 121(1). He however urged us to exercise our discretion so as not to punish his client with the costs of the appeal. Mr. Anantham for the respondent did not press for a taxation of the costs. Accordingly, we dismissed the appeal, affirmed the orders of the High Court and ordered the deposit in court to be paid out to the respondent as its costs in lieu of taxation.